

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANIBAL GUTAMA,

Plaintiff,

-against-

WHITESTONE AIR INC., KONSTANTINA BISCARDI
a/k/a KONSTANTINA TEGERIDES, and
MICHAEL TEGERIDES,

Defendants.
-----X

Civil Action No.:
23-CV-2802-ENV-PK

**DECLARATION
IN OPPOSITION**

I, Anibal Gutama, declare under penalty of perjury, and pursuant to 28 U.S.C. §1746, that the following is true and accurate:

1. I am the Plaintiff in the above-captioned action. As such, I have personal knowledge of the facts set forth herein.

2. I respectfully submit this Declaration in opposition to the request by Defendants Whitestone Air Inc. (“Whitestone”), Konstantina Biscardi a/k/a Konstantina Tegerides (“Biscardi”), and Michael Tegerides (“Tegerides”) (collectively the “Defendants”) to vacate the default judgment entered in my favor against them on November 22, 2024 for \$195,909.40, plus interest.

3. As noted in my Complaint and Declaration in support of my motion for a default judgment against Defendants, I was employed by them as a W-2 employee, where I worked from approximately May 2018 through November 2022 as an HVAC mechanic.

4. It is my understanding that now, for the first time, Biscardi is making a false statement that I was never an employee of Defendants, but was an “independent contractor who [they] paid as a 1099.” *ECF No. 27 (Biscardi Decl., ¶12)*.

5. Defendants' position is belied by the documents issued to me during my employment with Defendants.

6. For example, for me to perform my duties for Defendants, they would provide me with work orders on corporate letterhead, which was previously filled out by Defendants advising of the duties I was to perform at the locations assigned by Defendants. These all contained Whiteston's business address, being 149-44 15th Drive, Whitestone, New York 11357. The hours I worked for that day would be noted above my signature next to "Antonio G." *Copies of the work orders are annexed hereto as Exhibit "J."*

7. After performing jobs for the week, Biscardi, on behalf of Whitestone, would issue me paychecks for the week. Next to the "Memo" line, it would indicate "Payroll" and then the dates for the period covered for that payroll period. *Samples of the checks I have in my possession from Defendants supporting that I was a W-2 employee are annexed hereto as Exhibit "H."*

8. Finally, completely undermining Biscardi's position that I was an independent contractor of Defendants are copies of the W-2 statements issued to me by Whitestone during my employment there. At no time did I receive a 1099 from Defendants supporting their contention that I was an independent contractor as taxes were taken out of my pay by Defendants. *Copies of the W-2 forms I received from Defendants are annexed hereto as Exhibit "I."*

9. The work orders, paychecks and W-2s all had the same consistent address as I am told where Defendants were served with process, being 149-44 15th Drive, Whitestone, New York 11357.

10. In sum, it is my understanding that that there is no basis to vacate the default judgment entered in my favor as Defendants knew of this action before any default proceedings were commenced, their defense of me being a 1099 independent contractor is belied by

documentary evidence, and I would be prejudiced after waiting this long to obtain the relief to which I have been lawfully entitled for years now.

11. I declare under penalty of perjury that the foregoing is true and accurate, that this was translated to me in my native language, and that I am not under any undue duress at the time I am signing this Declaration.

Dated: May 5, 2025



ANIBAL GUTAMA